

CONTENTS

ABBREVIATIONS.....	ix
PREFACE	xi
1. INTRODUCTION.....	1
1.1. <i>The establishment of a complementary international criminal court</i>	<i>1</i>
1.2. <i>Possible relationships between international and national jurisdiction</i>	<i>4</i>
1.3. <i>Why analyse the complementarity principle?.....</i>	<i>6</i>
1.4. <i>The available sources of law.....</i>	<i>7</i>
1.5. <i>The book's further structure.....</i>	<i>9</i>
2. WHY AND WHERE SHOULD INTERNATIONAL CRIMES BE PROSECUTED?..	11
2.1. <i>Introduction</i>	<i>11</i>
2.2. <i>The purposes of the Rome Statute.....</i>	<i>11</i>
2.3. <i>The purposes of the complementarity principle.....</i>	<i>15</i>
2.4. <i>Comparing national and international criminal proceedings.....</i>	<i>20</i>
3. THE HISTORY OF THE COMPLEMENTARITY PRINCIPLE.....	31
3.1. <i>Introduction</i>	<i>31</i>
3.2. <i>The political stakes involved and the changing times.....</i>	<i>32</i>
3.3. <i>Early ILC discussions (1950-88).....</i>	<i>35</i>
3.4. <i>The establishment of the ad hoc tribunals (1993-94).....</i>	<i>41</i>
3.5. <i>The ILC discussions on an international criminal court (1990-94).....</i>	<i>44</i>
3.6. <i>The discussions in the Ad Hoc Committee (1995).....</i>	<i>64</i>
3.7. <i>The discussions in the Preparatory Committee (1996-98).....</i>	<i>69</i>
3.8. <i>The Rome Conference (1998).....</i>	<i>80</i>
4. THE PROCEDURES OF THE COMPLEMENTARITY PRINCIPLE.....	87
4.1. <i>Introduction</i>	<i>87</i>
4.2. <i>The trigger mechanisms.....</i>	<i>89</i>
4.3. <i>The distinction between a "situation" and a "case".....</i>	<i>91</i>
4.4. <i>The decision whether to investigate.....</i>	<i>94</i>
4.5. <i>The decision whether to prosecute</i>	<i>120</i>
4.6. <i>Article 18: Preliminary rulings regarding admissibility.....</i>	<i>123</i>
4.7. <i>Article 19: Challenges to the admissibility of a case</i>	<i>150</i>
4.8. <i>Two particular procedural issues.....</i>	<i>178</i>
5. THE SCOPE OF ARTICLE 17.....	185
5.1. <i>The main rule: national proceedings prevail</i>	<i>185</i>
5.2. <i>The "sufficient gravity" criterion.....</i>	<i>186</i>

5.3. The term “complementary”	187
5.4. The term “a State which has jurisdiction”	190
5.5. The terms “the case”, “the person concerned” and “the same conduct”	197
5.6. National inaction: automatic admissibility	199
5.7. Relevant national proceedings	202
5.8. General vs. specific information	212
6. “GENUINE” NATIONAL PROCEEDINGS: RELATED CONCEPTS OF INTERNATIONAL LAW	215
6.1. Introduction	215
6.2. Process and not outcome	216
6.3. Cultural differences and national margin	217
6.4. A general standard	218
6.5. Human rights standards	219
6.6. The ICC’s own proceedings as a standard	229
7. THE APPLICABILITY OF THE ADMISSIBILITY CRITERIA IN THREE PARTICULAR SCENARIOS	231
7.1. Introduction	231
7.2. The admissibility criteria and internationalised courts	231
7.3. The admissibility criteria and Security Council referrals	236
7.4. The admissibility criteria and self-referrals	246
8. UNWILLINGNESS	251
8.1. The term “unwillingness”	251
8.2. The attribution of the unwillingness to the state	253
8.3. The factors in article 17(2)	256
8.4. Legitimate reasons not to investigate, prosecute or convict	309
9. INABILITY	313
9.1. Introduction	313
9.2. The factors in article 17(3)	313
9.3. General or specific causes of a state’s “inability”	328
10. POSSIBLE LACUNAS IN THE ADMISSIBILITY CRITERIA	331
10.1. Introduction	331
10.2. Completed trials and inability	331
10.3. The accused has abused the national process	332

10.4. <i>New significant evidence after a completed proceeding</i>	333
10.5. <i>The convicted person is subsequently pardoned or paroled</i>	334
10.6. <i>The state has characterised an ICC crime as an ordinary crime</i>	335
10.7. <i>The case has implications for other cases before the ICC</i>	337
11. THE PROSECUTORIAL DISCRETION	339
11.1. <i>Introduction</i>	339
11.2. <i>Some general aspects</i>	340
11.3. <i>Prosecutorial discretion before other international and national jurisdictions</i>	346
11.4. <i>The “interests of justice” criterion in article 53 – general analysis</i>	353
11.5. <i>Factors listed in article 53</i>	359
11.6. <i>Factors not listed in article 53</i>	372
11.7. <i>Judicial control</i>	403
11.8. <i>The need for a prosecutorial policy, transparency and guidelines</i>	410
12. COMPLEMENTARITY AND ALTERNATIVE NATIONAL MECHANISMS	417
12.1. <i>Introduction</i>	417
12.2. <i>The transitional government’s dilemma</i>	420
12.3. <i>National amnesties and other states</i>	423
12.4. <i>National amnesties and the Rome Statute</i>	424
12.5. <i>Suggested factors for the “evaluation” of national amnesties</i>	451
12.6. <i>Conclusive remarks</i>	463
13. CONCLUSIVE REMARKS	469
13.1. <i>Introduction</i>	469
13.2. <i>Safeguarding state sovereignty</i>	469
13.3. <i>Promoting national criminal proceedings</i>	473
13.4. <i>Ensuring effective ICC interference</i>	478
13.5. <i>Ensuring an appropriate selection of situations and cases</i>	483
13.6. <i>Would a primary ICC have been preferable?</i>	486
INDEX	489
BIBLIOGRAPHY	499
SELECTED DOCUMENTS	515
TABLE OF CASES	525